

**IN THE SUBORDINATE COURT OF THE FIRST CLASS 2017/CRMP/LCA/130
FOR THE LUSAKA DISTRICT
HOLDEN AT LUSAKA**

(Criminal Jurisdiction)

BETWEEN:

BRENDA CHIGAMA

APPELLANT

AND

COLLINS DAKA

RESPONDENT

BEFORE: MAGISTRATE L.K. MUSONDA (RESIDENT MAGISTRATE)

For the Appellant : In person

For the Respondents : In person

JUDGMENT

Case referred to:

1. *Chibwe v Chibwe (2001) ZR 1*

This is an Appeal for property settlement from the Judgment of the Lusaka Local Court dated 23rd day of November, 2016 granting the appellant custody of the four out of the five children of the family as the oldest child, a daughter, is married. The court below also awarded monthly maintenance to the Appellant of K500.00 to go towards the support of the children of the family in her custody in addition to giving the children of the family ownership of the family house in Kanyama site and service which generates rental income to support

the needs of the Appellant and her children in addition to accommodating her and the children.

It was also the Judgment of the Court below that the matrimonial home be given ownership to the two of the five children of the family and that the said ownership changes be effected on the ownership documents at the Lusaka City Council.

It was the foregoing part of the Judgment of the court below which excluded the Appellant and the other three children of the family that gave rise to this appeal and was the main borne of contention in the parties' submissions on Appeal in this Court.

In the sworn evidence of the Appellant in the Appeal herein, the Appellant prayed that she be added to the beneficial owners of the matrimonial home besides the two children of the family as directed in the Court below.

In Response, the Respondent in his sworn evidence submitted in principle that he had no objection to the Appellant's prayer and cited that he would equally be comfortable if the other three children of the family were added as co beneficial owners of the matrimonial home in addition to the Appellant.

In her rebuttal, the Appellant was agreeable to the Respondents submission, suffice to say that the parties were in fact speaking the same language.

In the quest to administer justice regarding the main issue in contention, which is relating to ownership of the matrimonial house, I am guided by the principles espoused in the celebrated case of **Chibwe v Chibwe**¹ in which the Supreme Court held that "in making

property adjustments or awarding maintenance after divorce the court is guided by the need to do justice taking into account the circumstances of the case”.

For the foregoing reasons, and having carefully heard the submissions of both parties and taking into consideration all other circumstances it is my finding that it would be in the interest of justice to uphold the children’s monthly maintenance of K500.00 as the Respondent has readily relinquished his interest in the matrimonial house, which in addition to sheltering the Appellant and the children of the family in her custody, also has other rentable flats which generate additional rental income to go towards the needs of the family.

It is further ordered that the Judgment of the lower court on the ownership of the matrimonial house is varied to include the Appellant as co beneficial owner of the said house and also as Trustee for all the five children of the family. It is further directed the Appellant be responsible for all registration expenses at Lusaka City Council for such ownership changes.

The appeal is allowed in part.

Delivered at Lusaka on the Day of 2017


.....
L. K. MUSONDA
RESIDENT MAGISTRATE



